

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT:	Platner, <i>et al.</i>	CONFIRMATION No.:	8906
SERIAL NUMBER:	09/888,345	EXAMINER:	Michael Misiaszek
FILING DATE:	June 22, 2001	ART UNIT:	3625
PATENT NUMBER:	7,647,244	Issue Date:	January 12, 2010
FOR:	METHOD FOR PROVIDING A CERTIFICATE FOR AN ONLINE PRODUCT		

VIA EFS

**REQUEST FOR RECONSIDERATION OF PATENT TERM INDICATED
ON FACE OF PATENT UNDER 37 C.F.R. § 1.705(d)**

U.S. Patent No. 7,647,244 issued on January 12, 2010 from the above referenced application. The face of the patent indicates that the patent term adjustment is 517 days. Applicants hereby respectfully request reconsideration of the patent term adjustment. Specifically, Applicants believe that the total patent term adjustment should be a total of 767 days.

In support of this request, Applicants submit the following statement of facts pursuant to 37 C.F.R. § 1.705(b).

(i) The adjustment under 37 C.F.R. § 1.702(a), for failure of the Office to take certain actions within specified time frames, is 761 days.

(ii) The reduction of patent term under 37 C.F.R. § 1.704(b), for Applicants' failure to engage in reasonable efforts to conclude prosecution of the application, is 244 days.

(iii) The correct patent term adjustment calculated under 37 C.F.R. § 1.702(b) is 250 days, due to the failure of the Office to issue a patent within three years after the date on which the application was filed, but not including any overlap with the period in (i) and excluding the period, if any, from the date a Request for Continued Examination ("RCE") was filed to the issue date. This application was filed on June 22, 2001 and issued on January 12, 2010. A patent should have issued by June 22, 2004, a delay of 2029 days.

The following periods included under (i) above overlap with the delay of 2029 days calculated here: 50 days of the period for failure to issue a first action within 14 months of filing

the application (the period from the day after the date that is the 3 yr anniversary of filing, June 22, 2004, to the date the action was mailed, August 11, 2004).

An RCE was filed on April 19, 2005. The period from April 19, 2005 to the issue date, January 12, 2010 (1729 days), is excluded from the period calculated here.

Thus, the correct patent term adjustment calculated under 37 C.F.R. § 1.702(b) is 250 days ($2029 - 50 - 1729 = 250$ days).

The adjustment sought under 37 C.F.R. § 1.703(f) is the sum of the non-overlapping periods under § 1.702(a) (761 days) and § 1.702(b) (250 days), less the delays attributable to Applicants (244 days), or 767 days.

According to the Federal Circuit's ruling in *Wyeth v. Kappos* ("Kappos"), no overlap can occur between the § 1.702(a) and § 1.702(b) periods before the time that is 3 years after the filing date of the application in the United States ("the 3-year mark"). This is because the period of 37 C.F.R. § 1.702(b) does not begin until the 3-year mark. Applicants have used the sum of the non-overlapping periods of § 1.702(a) and § 1.702(b), in accordance with the meaning of "overlap" as defined by the by the Federal Circuit in *Kappos*, to calculate the patent term adjustment due for this application.

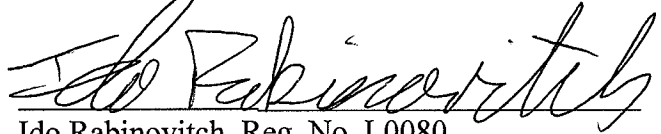
Applicants note that the above-identified application is not subject to a terminal disclaimer. There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of the application as set forth in 37 C.F.R. § 1.704, other than the circumstances of record.

U.S.S.N.: 09/888,345
U.S.P.N.: 7,647,244
Applicant: Platner, *et al.*

In summary, Applicants respectfully request an adjustment of patent term under 37 C.F.R. § 1.703 to indicate a total PTA of 767 days. The \$200 fee required for filing this request for reconsideration of patent term pursuant to 37 C.F.R. § 1.705(d) is submitted herewith. No additional fee is believed to be due by submission of this paper. However, the Office is authorized to charge any such fees, or to credit any overpayment in fees to Deposit Account No. **50-0311**, Customer Number 64046, Attorney Docket No. 36353-501.

Date: March 12, 2010

Respectfully submitted,



Ido Rabinovitch, Reg. No. L0080

Muriel M. Liberto, Reg. No. 55,382

Mintz, Levin, Cohn, Ferris, Glovsky and
Popeo, P.C.

One Financial Center

Boston, MA 02111

Customer No. 64046

Tel.: (617) 542-6000

Fax: (617) 542-2241

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